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ARIZONA CORPORATION COMMISSION



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2010 JUL 29 A 9:43

DATE: JULY 29, 2010

DOCKET NO.: W-20637A-08-0560

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

CUP OF GOLD WATER COMPANY, INC.
(ADJUDICATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 9, 2010

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 24, 2010 and AUGUST 25, 2010

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

JUL 29 2010

DOCKETED BY	
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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

7 IN THE MATTER OF THE APPLICATION OF
8 CUP OF GOLD WATER COMPANY, INC., AN
9 ARIZONA NON-PROFIT CORPORATION, FOR
ADJUDICATION NOT A PUBLIC SERVICE
CORPORATION.

DOCKET NO. W-20637A-08-0560

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: September 28, 2009
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
13 APPEARANCES: Mr. Bill Stephens, BILL STEPHENS, P.C., on behalf of
14 Cup of Gold Subdivision; and
15 Ms. Ayesha Vohra, Staff Attorney, Legal Division, on
16 behalf of the Utilities Division of the Arizona
Corporation Commission.

17 **BY THE COMMISSION:**

18 On November 5, 2008, Cup of Gold Water Company, Inc., ("Cup of Gold" or "Applicant" or
19 "Company") filed with the Arizona Corporation Commission ("Commission") an application on
20 behalf of its customers who are the sole shareholders of the Company, seeking adjudication not a
21 public service corporation under Arizona law.

22 On January 15, 2009, the Commission's Utilities Division Staff ("Staff") filed an
23 insufficiency letter in this docket stating the Applicant's application had not met the sufficiency
24 requirements as outlined in the Arizona Administrative Code ("A.A.C.").

25 On June 29, 2009, Cup of Gold filed a supplement to its application consisting of the legal
26 description specifying the metes and bounds of its service area.

27 On July 28, 2009, Staff filed a Sufficiency Letter indicating the Applicant's application had
28 met the sufficiency requirements outlined in the A.A.C.

1 By Procedural Order dated August 11, 2009, the hearing in this matter was set for September
2 28, 2009, and other filing deadlines were established.

3 On September 1, 2009, Staff filed its Staff Report recommending approval of Cup of Gold's
4 application.

5 On September 10, 2009, Applicant filed an Affidavit of Publication and Proof of Mailing
6 showing that notice of the application and hearing date had been published on August 26, 2009, in the
7 *Sedona Red Rock News*, a newspaper of general circulation in the Company's service area.

8 On September 28, 2009, a full public hearing was held before a duly authorized
9 Administrative Law Judge ("ALJ") of the Commission at its offices in Phoenix, Arizona. The
10 Applicant and Staff appeared through counsel and presented evidence and testimony. No members of
11 the public appeared to give public comment. At the conclusion of the hearing, Applicant was ordered
12 to provide Staff with specific information and supporting documentation including: 1) copies of the
13 minutes from the Board of Directors meeting authorizing Cup of Gold to pursue the above-captioned
14 application; 2) copies of the letters sent to Cup of Gold customers informing them of the pending
15 application; 3) copies of Cup of Gold's Amended By-Laws; and 4) copies of Cup of Gold's
16 Covenants, Conditions, and Restrictions ("CC&Rs"). Staff was directed to file an Amended Staff
17 Report analyzing the Applicant's Amended By-Laws, CC&Rs, and Articles of Incorporation to
18 determine if they comply with the Directives set forth in Commission Decision No. 55568 (May 7,
19 1987).

20 On November 24, 2009, Staff filed a request for an extension of time to file its Amended Staff
21 Report, stating that Staff had not received sufficient documentation from Cup of Gold to conduct a
22 further analysis of the application and that Cup of Gold had not timely responded to Staff's request
23 for information. Staff requested an extension of time until one month after receiving the required
24 documentation and information from Cup of Gold. Staff stated that it would immediately file notice
25 in this docket upon receipt of the necessary documentation and information from Cup of Gold.

26 By Procedural Order issued on November 27, 2009, Staff's request for an extension of time
27 was granted; Cup of Gold was ordered to respond to Staff's request for information within 10 days of
28 the Order; and the timeclock in this matter was suspended.

1 Between December 7, 2009 and May 5, 2010, Cup of Gold docketed additional information in
2 support of its application.

3 On May 5, 2010, Staff filed an Amended Staff Report, continuing to recommend approval of
4 Cup of Gold's application. On the same date, Cup of Gold filed an affidavit of publication, showing
5 that the Articles of Amendment were published in the Sedona Red Rock News on April 14, 16, and
6 21, 2010.

7 * * * * *

8 Having considered the entire record herein and being fully advised in the premises, the
9 Commission finds, concludes, and orders that:

10 FINDINGS OF FACT

11 1. Cup of Gold is an Arizona non-profit corporation formed for the purpose of providing
12 domestic water services to the homeowners of the Cup of Gold Subdivision.¹ Cup of Gold is in good
13 standing with the Commission's Corporation Division.

14 2. The Cup of Gold Subdivision is located near Sedona, Arizona in Yavapai County and
15 encompasses approximately 65 acres. The Cup of Gold Subdivision is comprised of three parcels
16 known as Cup of Gold Estates, South Cup of Gold Estates, and East Cup of Gold Estates.² Cup of
17 Gold's service area is more fully described in Exhibit A, attached hereto and incorporated herein.
18 There are 39 lots in the Cup of Gold Subdivision, 25 lots are occupied, 11 lots are undeveloped³ and
19 three lots are used by the Company to store its well, storage tank, and other facilities.⁴

20 3. On September 13, 2008, the Board of Directors authorized Cup of Gold to pursue an
21 application with the Commission seeking adjudication not a public service corporation.⁵ During the
22 same timeframe, Cup of Gold collected the signatures of a majority of its customers certifying that
23 they were in agreement with filing an application with the Commission for adjudication not a public
24 service corporation. The petition circulated to the homeowners in the Cup of Gold Subdivision
25

26 ¹ Cup of Gold Articles of Incorporation recorded in 1955.

27 ² Amended CC&Rs of Cup of Gold.

28 ³ Undeveloped means property is owned, but has no structure on it. Tr. at 14.

⁴ Cup of Gold application at 2.

⁵ Board of Directors Minutes docketed on November 23, 2009.

1 resulted in 20 votes in support of the application out of a total of 36 lot owners.⁶

2 4. On November 5, 2008, Cup of Gold filed an application with the Commission
3 requesting adjudication not a public service corporation.

4 5. Staff is recommending approval of Cup of Gold's application, subject to certain
5 conditions.

6 6. Notice of the application was given in accordance with the law.

7 **ADJUDICATION**

8 7. Mr. Ronald G. Mohoney, president of Cup of Gold, testified that the Company is
9 seeking the adjudication because Cup of Gold serves a small neighborhood and that the Company has
10 limited financial resources and that being regulated by the Commission would be costly and
11 potentially put the Company out of business.⁷ Mr. Mohoney further testified that being adjudicated
12 not a public service corporation would allow the Company to have access to various experts in the
13 water industry.⁸

14 8. In Commission Decision No. 555678 (May 7, 1987), the Commission issued a policy
15 directive regarding applications for adjudication not a public service corporation, and provided the
16 following seven criteria for evaluation of such applications:

- 17 9. (i). The application must be submitted by a non-profit homeowners association;
18 (ii). The application must be a bona fide request by a majority of the membership of
19 the association through petition signed by 51 percent or more of the then
20 existing members;
21 (iii). All associations making an application must have complete ownership of the
22 system and necessary assets;
23 (iv). Every customer must be an owner/member with equal voting rights and each
24 member is or will be a customer;
25 (v). The service area involved encompasses a fixed territory, which is not within the
26 service area of a municipal utility or public service corporation, or if it is, the
27 municipal utility or public service corporation is unable to serve;
28 (vi). There is a prohibition against further sub-division evidenced by deed
restrictions, zoning, water restrictions, or other enforceable governmental
regulations; and
(vii). The membership is restricted to a fixed number of customers, actual or
potential.

⁶ Company's application at Attachment 1.

⁷ Tr. at 13.

⁸ Tr. at 14.

1 10. According to Cup of Gold's Articles of Incorporation, Cup of Gold was incorporated
2 as a non-profit corporation on January 2, 1995.⁹ Cup of Gold's application complies with Directive
3 1.

4 11. Cup of Gold provided the Minutes from a Board Meeting held on September 13, 2008,
5 authorizing Cup of Gold's President to pursue the application for adjudication not a public service
6 corporation with the Commission on behalf of the homeowners.¹⁰ Cup of Gold submitted with its
7 application a petition showing that a majority of the homeowners in the Cup of Gold Subdivision
8 support the request for adjudication not a public service corporation.¹¹ The petition constituted 55
9 percent of homeowners in favor of pursuing the application with the Commission. Cup of Gold has
10 complied with Directive 2.

11 12. Directive 3 requires the association to have complete ownership of the system and
12 necessary assets. Cup of Gold provided a Warranty Deed showing that the original owner conveyed
13 the land and assets to the Company on March 3, 1969. The Warranty Deed was recorded in the
14 Yavapai Recorder's Office on March 7, 1969. Ownership is further evidenced by the Company's
15 CC&Rs which states that Cup of Gold members are the sole owners of the corporation, that each
16 member has one membership share in the corporation and that the provisions of the CC&Rs shall run
17 with the land.¹² Cup of Gold meets the requirements of Directive 3.

18 13. Cup of Gold is a non-profit corporation, whose customers are its members. Cup of
19 Gold filed Amended By-Laws stating that "each lot owner shall immediately become a member of
20 the corporation upon becoming a lot owner."¹³ Further, each lot owner shall be deemed a single
21 water customer for purposes of voting, and members shall have only one vote regardless of the
22 number lots owned.¹⁴ The Company's Amended By-Laws also direct that the Cup of Gold
23 Subdivision's CC&Rs comply with the Amended By-Laws.¹⁵ Therefore, Cup of Gold has complied
24 with Directive 4, which requires that every customer must be a owner/member with equal voting

25 ⁹ Cup of Gold's Articles of Incorporation were subsequently amended in 2010.

26 ¹⁰ Cup of Gold's supplemental filing dated November 23, 2009.

27 ¹¹ Company's Application at Attachment 1, showing 20 lot owner signatures in favor of the application.

28 ¹² Cup of Gold's supplemental filing dated April 1, 2010, Exhibit E.

¹³ Amended By-Laws Article 2 Section 1.

¹⁴ Id.

¹⁵ Amended By-Laws Article 12.

1 rights and each member is or will be a customer.

2 14. Cup of Gold's Amended By-Laws and CC&Rs include language stating that it will
3 exclusively serve only customers/members located within the Cup of Gold Subdivision boundaries.¹⁶
4 Cup of Gold has 36 current members/owners and is limited to serving a total of 39 lots according to
5 its Amended By-Laws. Staff verified that the Cup of Gold Subdivision is not within the service area
6 of a municipal provider or public service corporation. Cup of Gold has complied with Directive 5.

7 15. Directive 6 requires a prohibition against further subdivision evidenced by deed
8 restrictions, zoning, water restrictions or other enforceable governmental regulations. Cup of Gold
9 filed Amended By-Laws which restrict the number of memberships to 39 and prohibits the further
10 subdivision of the existing lots. However, a review of Cup of Gold's Amended CC&Rs does not
11 include language mirroring the provision outlined in Directive 6. Cup of Gold should file, as a
12 compliance item in this docket, amended CC&Rs mirroring the language in Directive 6 prohibiting
13 further subdivision, within 180 days of a Decision in this matter.

14 16. Cup of Gold filed Amended By-Laws stating that membership in the corporation is
15 restricted to a fixed number of customers/owners. Cup of Gold currently has 36 members, with the
16 total allowable number of memberships being limited to the Subdivision's 39 lots. Therefore, Cup of
17 Gold's Amended By-Laws comply with the provision outlined in Directive 7.

18 17. Staff recommends advising Cup of Gold of its continuing obligations under the
19 applicable laws, regulations and orders of other regulatory agencies, including, but not limited to, the
20 Arizona Department of Environmental Quality ("ADEQ"), Arizona Department of Water Resources
21 ("ADWR"), and Yavapai County. Cup of Gold amended its By-Laws and CC&Rs adding the
22 language reflected in Staff's recommendation.

23 **Water System**

24 18. The Cup of Gold water system consists of a well, storage tank, and distribution
25 system serving 25 metered connections.¹⁷ Cup of Gold's water source is a single well, equipped
26 with 8-inch casing, drilled to a depth of 760 feet.¹⁸ Staff believes the Company's well production of

27 ¹⁶ Amended By-Laws Article 11.

28 ¹⁷ Staff's Engineering Report at 1.

¹⁸ Id.

1 30 gallons per minute is sufficient to serve the Cup of Gold Subdivision.¹⁹

2 19. ADEQ has determined that Cup of Gold's water system is in compliance and is
3 delivering water that meets water quality standards as required by the A.A.C.

4 20. The Cup of Gold service area is not located within an ADWR Active Management
5 Area and therefore is not subject to reporting and conservation requirements. However, ADWR
6 reported that Cup of Gold is in compliance with departmental requirements governing water
7 providers.²⁰

8 21. Cup of Gold represents the homeowners of the Cup of Gold Subdivision. A majority
9 of the homeowners have petitioned the Commission for adjudication not a public service corporation.
10 Cup of Gold is a non-profit corporation, whose customers are its members and whose
11 members/owners are the sole shareholders of the corporation. Member/owners have equal voting
12 rights. The Cup of Gold Subdivision is not located within a municipality or public service corporation
13 and encompasses a fixed territory. According to Cup of Gold's Amended By-Laws, membership has
14 been limited to the 39 lot owners within the Cup of Gold Subdivision and further subdivision of the
15 39 lots is prohibited. Based on these facts, Staff has recommended approval of Cup of Gold's
16 application.

17 22. Staff's recommendation, as amended herein, is reasonable and will be adopted.

18 **CONCLUSIONS OF LAW**

19 1. The Commission has jurisdiction over the subject matter of Cup of Gold's application.

20 2. Cup of Gold is not a public service corporation within the meaning of Article XV of
21 the Arizona Constitution.

22 3. Cup of Gold Water Company remains subject to applicable laws, regulations and
23 orders of other regulatory agencies, including, but not limited to ADEQ, ADWR, and Yavapai
24 County.

25 4. Notice of the application was given in accordance with the law.

26 5. Staff's recommendation for approval of the application is reasonable and should be

27 _____
28 ¹⁹ Id.

²⁰ Staff's Engineering Report at 2.

1 adopted.

2 **ORDER**

3 IT IS THEREFORE ORDERED that the application of Cup of Gold Water Company, Inc. for
4 adjudication not a public service corporation is hereby granted, subject to the following Ordering
5 Paragraphs.

6 IT IS FURTHER ORDERED that Cup of Gold Water Company, Inc. shall file with Docket
7 Control, as a compliance item in this docket, within 180 days of the effective date of this Decision, a
8 copy of the Amended Covenants, Conditions, and Restrictions mirroring the language in the
9 Commission's Policy Directive 6, prohibiting the further subdivision of the 39 lots contained in the
10 Cup of Gold Subdivision.

11 IT IS FURTHER ORDERED that Cup of Gold Water Company, Inc. shall file with Docket
12 Control, as a compliance item in this docket, a copy of the Amended Covenants, Conditions, and
13 Restrictions, recorded with the Yavapai County which complies with the above Ordering Paragraph,
14 within 180 days of the effective date of this Decision.

15 IT IS FURTHER ORDERED that if at any time in the future, the recorded Covenants,
16 Conditions, and Restrictions or the By-Laws for Cup of Gold Water Company, Inc., are changed to
17 allow further subdivision of the 39 lots in the adjudication area, to allow an increased number of
18 memberships, to allow for expansion of the area to be served, or to change the equal voting
19 requirements, then the adjudication granted herein shall become null and void after due process, and
20 Cup of Gold Water Company, Inc. shall file an application with the Commission for a Certificate of
21 Convenience and Necessity, within 30 days of any of the above mentioned events.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that Cup of Gold Water Company, Inc., is hereby advised of its continuing obligations under the applicable laws, regulations and orders of other regulatory agencies, including, but not limited to, the Arizona Department of Environmental Quality, the Arizona Department of Water Resources, and Yavapai County.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: CUP OF GOLD WATER COMPANY, INC.

2 DOCKET NO.: W-20637A-08-0560

3

4 Bill Stephens
5 BILL STEPHENS, P.C.
6 4647 North 32nd Street, No. 285
7 Phoenix, Arizona 85018
8 Attorney for Applicant

9 Janice Alward, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Steven Olea, Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007

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EXHIBIT "A"

CUP OF GOLD WATER COMPANY, INC.
DOCKET NO. W-20637A-08-0560
LEGAL DESCRIPTION

Beginning at the SW corner of the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 33, Township 17 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona;

THENCE N 02° 23' E, a distance of 645.88 feet to the West Quarter Corner of said Section 33;

THENCE N 00° 08' W, a distance of 388.22 feet;

THENCE N 00° 08' W, a distance of 1,576.50 feet to the SW corner of the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 33;

THENCE N 88° 02' E, a distance of 1,094.26 feet;

THENCE N 88° 02' E, a distance of 240.51 feet to the NW corner of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 33;

THENCE N 88° 38' E, a distance of 1,408.79 feet, more or less, to the intersection of the north bank of Oak Creek and the north line of the S $\frac{1}{2}$ of the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 33;

THENCE S 68° 38' W, a distance of 480.00 feet;

THENCE S 57° 45' 25" W, a distance of 405.20 feet;

THENCE S 59° 41' W, a distance of 155.87 feet;

THENCE S 49° 37' 40" W, a distance of 125.68 feet;

THENCE S 40° 19' 30" W, a distance of 269.01 feet;

THENCE S 54° 38' 25" W, a distance of 224.55 feet;

THENCE S 61° 46' W, a distance of 234.06 feet;

THENCE S 87° 26' 07" W, a distance of 235.98 feet;

THENCE N 80° 13' W, a distance of 248.34 feet;

THENCE S 82° 11' W, a distance of 125.62 feet;

THENCE S 62° 59' W, a distance of 206.45 feet;

THENCE S 23° 04' W, a distance of 115.51 feet;

THENCE S 14° 48' 30" W, a distance of 127.94 feet;

THENCE S 00° 28' 25" E, a distance of 417.77 feet;

THENCE S 30° 58' 08" E, a distance of 219.19 feet;

THENCE S 39° 10' 01" E, a distance of 122.56 feet;

THENCE S 39° 03' 50" E, a distance of 152.61 feet;

THENCE S 37° 33' 42" E, a distance of 149.50 feet;

THENCE S 53° 23' 34" E, a distance of 128.67 feet;

THENCE S 49° 40' 04" E, a distance of 122.00 feet;

THENCE S 54° 39' 54" E, a distance of 499.95 feet to the SE corner of the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 33;

THENCE S 89° 15' 25" W, a distance of 1,314.70, more or less, to the POINT OF BEGINNING.